

Hawke
 McKeon &
 Sniscak LLP

ATTORNEYS AT LAW

William E. Lehman
(717) 236-1300 x248
wlehman@hslegal.com

100 North Tenth Street, Harrisburg, PA 17101 Phone: 717.236.1300 Fax: 717.236.4841 www.hmslegal.com

January 15, 2014

Via Electronic Filing

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street – Filing Room
Harrisburg, PA 17120

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Re: Jackie Stefanowicz v. Verizon Pennsylvania LLC;
Docket No. P-2014-2400041 (and C-2013-2396172)
ANSWER TO PETITION FOR EMERGENCY ORDER

Dear Ms. Chiavetta:

Enclosed for filing with the Commission is the Answer of Verizon Pennsylvania LLC in response to the Petition for Emergency Order filed by the Complainant in the above-referenced docket. A copy of this document has been served in accordance with the attached Certificate of Service.

If you have any questions with regard to this filing, please direct them to me. Thank you for your attention to this matter.

Very truly yours,



William E. Lehman

Counsel for Verizon Pennsylvania LLC

WEL/bes

Enclosure

cc: Jackie Stefanowicz

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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JACKIE STEFANOWICZ,

Complainant

v.

VERIZON PENNSYLVANIA LLC,

Respondent

Docket No. C-2013-2396172
P-2014-2400041

**ANSWER OF VERIZON PENNSYLVANIA LLC
TO PETITION FOR EMERGENCY ORDER
FILED BY COMPLAINANT, JACKIE STEFANOWICZ**

Verizon Pennsylvania LLC (“Verizon PA”), by and through its Counsel, Hawke, McKeon and Sniscak LLP, pursuant to 52 Pa. Code § 5.61(e), hereby answers the Petition of Jackie Stefanowicz (“Complainant”) for Interim Emergency Order (“Petition”). In her Petition, under the guise of an alleged “emergency,” the Complainant requests that the Pennsylvania Public Utility Commission (“Commission”) order Verizon PA to provide her with “full service with the ability to pay on the account what she can,” so she can attempt to find a job. To be clear, although Ms. Stefanowicz has not paid Verizon PA for any service since August of 2013, she still has working “basic” telephone service (the ability to make local calls and access 911), which Verizon PA has not yet suspended. She is asking the Commission to force Verizon PA to restore her “non-basic” services (long distance and voicemail), and presumably not to suspend her basic service that she continues to use without payment, all without requiring her to pay. As explained *more fully below, this request is not a proper use of the Commission’s emergency order process, as an emergency is defined as “[a] situation which presents a clear and present danger to life or property”* 52 Pa. Code § 3.1, and is a waste of the Commission’s and Verizon PA’s valuable time

and resources. It also ignores the fact that the Complainant currently has working basic service and the Commission has no jurisdiction over interexchange (long-distance) rates. Furthermore, this request ignores the Commission's regulations and Verizon PA's tariff, both of which require customers to pay for the services they receive. Forcing Verizon PA to provide service to a customer who has not paid her past bills and admits a present and continuing inability to pay for the service constitutes a taking of Verizon PA's property without any compensation. As explained in more detail below, the Complainant's request for interim emergency relief should be denied. In support of its answer, Verizon PA submits the following.

I. Introduction and Factual Background

The Complainant attempts to circumvent the Commission's complaint procedures, the Commission's regulations and Verizon PA's tariff requiring a customer to pay for services rendered, by improperly using the Commission's emergency order process to have her non-basic and long distance services restored without paying for such services, claiming that she needs these services to find a job and thus should not be required to pay for them. These circumstances are not within the ambit of the Commission's emergency order procedures. An "emergency" for purposes of the injunctive relief provided in the Commission's regulations is clearly defined as "[a] situation which presents a clear and present danger to life or property ..." 52 Pa. Code § 3.1. The instant Petition is an abuse of process, a waste of the Commission's and Verizon PA's valuable time and resources and should be denied accordingly.

On December 10, 2013, the Formal Complaint of Jackie Stefanowicz was served on Verizon PA. The Complaint requests that Verizon PA "[d]o not connect [sic] basic, long distance (non-basic) or voicemail service (non-basic)," and that Verizon PA allow her to "[r]un a tab" for such services until a hearing can be held. (Complaint at ¶ 5) She alleges that she has been out of work for over four and a half years and needs these services in order to find

employment and that the “Commonwealth and the PUC has contributed to individuals whose origin is U.S. by hiring non U.S. origin individuals with U.S. origin citizens remaining unemployed.” (Complaint at ¶ 5) On December 23, 2013, Verizon PA timely filed an Answer denying the material facts and averring that the Complainant’s non-basic service was suspended on November 15, 2013 for non-payment and that the Complainant has not disputed this non-payment. (Verizon PA Answer at 2) Verizon PA also stated that it is willing to seek to resolve this matter by further discussing with the Complainant the possibility of reducing her monthly bill with Lifeline 135, if she qualifies for this program and applies for the discount, and entering into a payment plan. *Id.* Verizon PA’s Answer is incorporated herein by reference. By Order dated December 26, 2013, this matter was scheduled for informal mediation before Cynthia Lehman. On January 9, 2013, the Complainant filed the instant Petition for Interim Emergency Order, but did not serve it on Verizon PA as required by the Commission’s regulations at 52 Pa. Code § 3.6. Therefore, the Commission e-served the Petition on Verizon PA on January 13, 2013 and scheduled a hearing for January 17, 2013 before the Honorable Elizabeth H. Barnes. The Commission’s regulations at 52 Pa. Code § 3.6 allow for the filing of an answer to a Petition for Emergency Order. This Answer is being filed in compliance with this section.

The facts of this matter are straight-forward. As Verizon PA stated in its Answer and will be presented through the direct testimony of its witness at the hearing, the Complainant has not paid anything toward her Verizon bills since August of 2013. She currently owes Verizon \$267, as both her basic and non-basic service are delinquent. In an effort to allow her to keep her non-basic service, Verizon PA entered into a payment arrangement with her on October 15, 2013. However, the Complainant did not comply with her commitment under this arrangement as no payment was received. Therefore, Verizon PA suspended her non-basic service on November 15, 2013. Verizon has not initiated action to suspend her basic service, but it is also delinquent. The

Complaint has not disputed this non-payment and raises no issue with the substance of the charges. She simply raises the inability to pay and asks the Commission to order Verizon PA to reinstate her non-basic service and provide her long distance service, without requiring her to pay for this service. Verizon PA's tariff and the Commission's regulations require customers to actually pay for the services rendered. Verizon PA, as a courtesy to the Complainant and to resolve the complaint, contacted her in an effort to possibly reduce her bill amount and enter into another payment arrangement. All of these efforts by Verizon PA were rebuffed by the Complainant, and now, in an effort to circumvent the Complaint process, she has requested the Commission, through the emergency order process, to reinstate her non-basic service immediately. As stated below, this request is an abuse of the emergency order process as she has not met the initial "emergency" standard even to qualify to file an Emergency Order Petition and furthermore has not met the four-pronged test that a grant of emergency relief requires.

II. Legal Standard

An "emergency" is "[a] situation which presents a clear and present danger to life or property or which is uncontested and requires action prior to the next scheduled public meeting." 52 Pa. Code § 3.1. Should this emergency standard be met – which it is not here - the Commission allows for an interim request for emergency relief during the pendency of a proceeding by the filing of a Petition for Interim Emergency Order. 52 Pa. Code § 3.6. Section 3.6 states the four-prong test for emergency relief as follows:

1. The petitioner's right to relief is clear;
2. The need for relief is immediate;
3. The injury would be irreparable if relief is not granted; and
4. The relief requested is not injurious to the public interest.¹

¹ 52 Pa. Code §§ 3.2 and 3.6.

The test is in the conjunctive; to support relief, each prong must be satisfied. Following a hearing on the merits, the presiding officer shall issue an order granting or denying the petition and setting forth findings on that four-prong test. 52 Pa.Code § 3.7(b).

The Complainant bears the burden of proving entitlement to emergency relief by a preponderance of the evidence, or evidence which is more convincing than the evidence presented by the other parties.² The Complainant's failure to prove any one of the elements compels the denial of such relief.³ The findings of fact "necessary to support an adjudication of the Commission must be based upon substantial evidence, which is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."⁴ The Complainant bears both the burden of production and the burden of persuasion.⁵ Unlike the burden of production, the burden of persuasion "includes determinations of credibility and acceptance or rejection of inferences...and [e]ven unrebutted evidence may be disbelieved."⁶ In order to bear the burden of proof and be entitled to a decision in the Complainant's favor, the Complainant must bear both the burden of production and the burden of persuasion.⁷

III. Argument

A. The Complainant's Petition Does Not Satisfy the Commission's Four-Prong Test For Emergency Relief

The four requirements for emergency relief are cumulative and if the party seeking relief fails to prove any one of the four requirements by substantial evidence in the record, the

² 66 Pa. C.S. § 332; *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.3d 854 (1950); *Samuel J. Lansberry, Inc. v. Pa. Publ. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990).

³ *Crums Mill Associates, et al. v. Dauphin Consolidated Water Supply*, PUC Docket No. C-00934810 (Order entered April 16, 1993), slip op. at 4 ("Crums Mill"); *Leonard v. Thornburgh*, 463 A.2d 77 (Pa. Cmwlth. 1983).

⁴ Order Denying Interim Emergency Relief, *Buffalo-Lake Erie Wireless Systems Co. v. Verizon-PA* (C-2010-2158408) (Mar. 2, 2010, Order of ALJ Colwell) at 10 ("BLEW") (citing *Mill v. Pa. Publ. Util. Comm'n*, 447 A.2d 1100 (Pa. Cmwlth. Ct.1982)); *Edan Transportation Corp. v. Pa. Publ. Util. Comm'n*, 623 A.2d 6 (Pa. Cmwlth. Ct.1993), 2 Pa. C.S. § 704.)

⁵ *Hurley v. Hurley*, 754 A.2d 1283 (Pa. Super. Ct. 2000).

⁶ *BLEW* at 11-12, citing *Suber v. Pa. Comm'n on Crime and Delinquency*, 885 A.2d 678 (Pa.Cmwlth. 2005), app. denied, 586 Pa. 776, 895 A.2d 1264 (2006).

⁷ *Id.*

Commission should deny the relief requested.⁸ The Complainant has failed to allege any facts or law that satisfies her heavy burden of showing that her need for non-basic service without the concomitant obligation to pay for that service, is “a situation which presents a clear and present danger to life or property.”⁹

i. The Complainant’s Right To Relief Is Not Clear

This is a simple billing dispute, in which the Complainant has failed to pay for her non-basic services rendered, a fact she does not dispute in either her Complaint or Petition. The Complainant wants to continue to use Verizon PA’s services without paying for them. As she clearly states in her Complaint, she wants Verizon PA to “run a tab” and in her Petition “the ability to pay on the account what she can.” The Complainant has cited to no authority (Commission statute, regulation or order, or to Verizon PA’s tariff) that empowers the Commission to order Verizon PA to provide service to a customer without payment or for the customer “to pay what she can.” To the contrary, it is well-settled that tariffed rates have the full force and effect of law and are binding on the customer, the Company and the Commission.¹⁰ The Commission simply has no authority to order Verizon PA to provide service that is not in conformance with its tariffed rates. Furthermore, the Commission’s regulations in Chapter 64 require Verizon PA to render bills to customers for services performed,¹¹ allow Verizon PA to suspend service for non-payment of delinquent charges and for failure to comply with the material terms of a payment agreement,¹² and require a customer to pay the full undisputed

⁸ *Crums Mill*.

⁹ 52 Pa. Code § 3.1.

¹⁰ *Stiteler v. The Bell Telephone Company of Pennsylvania, Inc.* 379 A.2d 339 (Pa. Cmwlth. 1977); *Springfield Township v. Pennsylvania Public Utility Commission*, 676 A.2d 304 (Pa. Cmwlth. 1996); *Bell Telephone Co. v. Pa. Public Utility Commission*, 417 A.2d 827, 828-29 (Pa. Cmwlth. 1980)

¹¹ 52 Pa. Code § 64.13.

¹² 52 Pa. Code § 64.61(1) and (5).

amount of current bills pending the outcome of a complaint.¹³ Moreover, requiring Verizon PA to furnish service to the Complainant without her paying the full amount for the services rendered would be a confiscation of Verizon PA's property without compensation. This is something that has never been ordered by this Commission and would set a dangerous, as well as unlawful precedent.

Moreover, the Commission has no jurisdiction over the rates charged for interexchange (long-distance) service and therefore cannot order Verizon PA to provide interexchange service to the Complainant for free or at a reduced rate.¹⁴

The Complainant's right to relief is not at all clear. In fact the opposite is true. It is clear that Complainant cannot prevail in obtaining an order for free service from Verizon. For this reason alone, the Emergency Order should be denied.

ii. The Complainant's Need For Relief Is Not Immediate

Under the Commission's regulations, the need for relief is immediate where there is a clear and present danger to the petitioner's life or property that will occur if emergency relief is not granted.¹⁵ The plain language of the statute requires extraordinary circumstances presenting a threat to life or property. The Complainant presents no such extraordinary circumstances.

Here, the Complainant simply alleges that she wants her non-basic and long-distance service restored because she is out of work and having this service restored will enable her, presumably, to acquire work which will "take the Complainant and the Complainant's household out of poverty status." (Petition at 3) This does not qualify as an emergency situation. She does not allege, nor provide any explanation as to how her not having access to non-basic services *for free* is a clear and present danger to her life or property. She could secure a restoral of her non-

¹³ 52 Pa. Code § 64.171.

¹⁴ 66 Pa. C.S. 3018; *Firetree, LTD v. AT&T Communications of Pennsylvania, LLC*; Dkt No. C-20055714 (Opinion and Order entered November 16, 2006) (slip op. at 6)

¹⁵ 52 Pa. Code § 3.1.

basic service by paying the amounts owed, by entering into and honoring a reasonable payment arrangement or even possibly by taking advantage of a social service program such as Lifeline. The “emergency” the Complainant describes is merely a billing dispute – she wants Verizon PA to provide her services, but does not want to pay for it.

Because no emergency exists, there is no need for immediate relief and the Petition should be denied on this prong alone.

iii. The Complainant’s Injury Would Not Be Irreparable If Relief Is Not Granted

The Complainant has failed to establish that her speculative harm is irreparable. It is well settled in the law that financial harm is not irreparable.¹⁶ Even when the monetary value of the harm faced by a petitioner is substantial, the economic harm itself does not amount to irreparable harm.¹⁷ The possibility that adequate compensatory or other corrective relief will be available at a later date, in the ordinary course of litigation, weighs heavily against a claim of irreparable harm.¹⁸ Thus, the Commonwealth Court has held that “a finding that economic detriment would result if the temporary grant were not issued did not amount to an ‘emergency’ as a matter of law” and speculative adverse economic effects do not constitute substantial evidence.¹⁹

The Complainant has failed to provide substantial evidence to support a finding of irreparable harm. Complainant’s claims of a lost opportunity to communicate information for employment status is tenuous and speculative at best. For example, in her Complaint, she states

¹⁶ *Crums Mill Associates, et al v. Dauphin Consolidated Water Supply Company*, PUC Docket No. C-00934810 (Order entered April 16, 1993), 1993 Pa. PUC LEXIS 90 (request by owners of a new office building for interim emergency order directing water company to extend main on an expedited basis not an emergency).

¹⁷ *The Peoples Natural Gas Co. v. Pa. Pub. Util. Comm’n*, 555 A.2d 288, 298 (Pa. Commw. Ct. 1989) (“an economic threat of the loss of a proposed plant expansion [does not] amount to the clear, immediate and irreparable injury required by the Commission’s own regulations . . . [and] [w]hile the[Commission] may have been motivated by the laudable desire to facilitate manufacturing and commerce . . . economic threat of the loss of a proposed plant [is not irreparable harm and the] adverse economic effects . . . are speculative.”).

¹⁸ *Sampson v. Murray*, 415 U.S. 61, 90, 39 L. Ed. 2d 166, 94 S. Ct. 937 (1974) (footnotes omitted) (quoting *Virginia Petroleum Jobbers Ass’n v. FPC*, 259 F.2d 921, 925 (D.C. Cir. 1958)).

¹⁹ *The Peoples Natural Gas Co. v. Pa. Publ. Util. Comm’n*, 555 A.2d 288, 291 (Pa. Cmwltth. Ct. 1989).

that she has been unemployed for four years and seven months. (Complaint at 3; ¶ 5) She fails to mention that she has had her non-basic services for this entire time and she still has working basic service. Alleging that without her non-basic services, she is suddenly missing out on employment opportunities is inconsistent with the history of her employment search, and disingenuous at best.

In short, the Complainant has provided no evidence that having access to non-basic services without having to pay for them qualifies as irreparable harm under the standard, and the Petition should be denied on this prong alone.

iv. The Complainant's Requested Relief Is Injurious To The Public Interest

Finally, the Commission must conclude that the requested relief will not be injurious to the public interest. Under this final prong, the Commission is required to engage in a careful balancing of the interests involved, but the Commission will not assume that the emergency relief will not injure the public interest. Rather, the Complainant has an affirmative duty to show that her requested relief would not injure the public interest.²⁰ The Complainant has not met this burden.

Were the Commission to order Verizon PA to provide service to the Complainant, without full payment for those services, it would set a dangerous, and, quite frankly, unlawful precedent. As stated above, Verizon PA charges for services provided pursuant to the terms of its tariff. The Complainant has not disputed the amount she is being charged for the services she receives; rather, she wants to receive these services for free or at a discounted rate. It is well-established that tariffed rates have the full force and effect of law and are binding on the

²⁰ See *Biesel v. Pa. Power & Light Co.*, Docket No. C-00934683, 1993 Pa. PUC LEXIS 45, at *8 (Pa. P.U.C. 1993).

customer, Company and the Commission. The Commission has no authority to order Verizon PA to provide service to the Complainant free of charge or at a reduced rate.

Moreover, a precedent that allows some customers to obtain free service would result in higher prices for other customers. Therefore, an order requiring Verizon PA to provide services without compensation would be injurious to the public, and the Petition should be denied for this reason alone.

B. The Complainant Comes Before The Commission With Unclean Hands

The Commission itself has acknowledged that its orders granting emergency relief “are tantamount to a court’s equity power” and that they are “interlocutory order[s] issued by a presiding officer which [are] immediately effective and grant or den[y] injunctive relief during the pendency of a proceeding.”²¹

The Supreme Court of Pennsylvania has long recognized the equitable doctrine of “clean hands,” which is:

founded in general principles of policy . . . *ex dolo malo non oritur actio* [out of fraud or deceit there is no action]. If . . . the cause of action appears to arise *ex turpi causa* [of shameful cause], or the transgression of a positive law . . . the court says [Plaintiff] has no right to be assisted. . . . It is an unbending rule with [the Supreme Court of Pennsylvania] that neither law nor equity will aid one in relation to that which is wholly or partially immoral or illegal.²²

As far back as 1899, the Pennsylvania Supreme Court has required that “he who comes into equity must come with clean hands . . . and the extraordinary remedy by injunction will not be granted when the plaintiffs stand convicted of acts which had contributed to the injury of

²¹ *Big Apple Dinner Theater, Inc. v. Bell of Pa.*, Docket No. C-00934817, 1993 WL 854384, at *2 and *1 n.2 (Pa. P.U.C. 1993) (“*Big Apple*”); see also *Schwartz v. Delaware & Hudson Ry. Co., Inc.*, Docket Nos. P-2011-2241780 and C-2011-2237486, 2011 WL 3001686 (Pa. P.U.C. 2011).

²² *Ad-Lee Co. v. Meyer*, 294 Pa. 498, 502, 144 A. 540, 542 (1928) (citing *Nester v. Continental Brewing Co.*, 161 Pa. 473, 29 A. 102 (1894); *Vandegrift v. Vandegrift*, 226 Pa. 254, 75 A. 365 (1910); *Walcofski v. Lehigh Valley Coal Co.*, 278 Pa. 84, 122 A. 238 (1923); *Rosenthal v. Ostrow*, 287 Pa. 87, 134 A. 384 (1926)).

which they complain.²³ The Commission tracks this language in *Sterin v. PECO Energy Co.*,²⁴ where it explains that “equity will not grant relief to a party, who, as actor, seeks to set judicial machinery in motion and obtain some remedy, if such party in his prior conduct has violated conscience or good faith or other equitable principles” and requires that “[t]hose who seek equity should do equity.” See *Sterin* (quoting *Black’s Law Dictionary*, 227 (5th Ed. 1979) and *Mazer v. Sargent Electric Co.*, 407 Pa. 169. 180 A.2d 63 (1962).

Here, the Complainant does not come before the Commission with clean hands. The Complainant fell behind in her payments. Even though the Complainant did not dispute the charges, Verizon PA entered into a payment arrangement with the Complainant, which the Complainant failed to keep. Only then did Verizon PA suspend her non-basic services (she has also not made a payment towards her basic service since August 2013 but Verizon PA has taken no action and that service remains active). By her failure or refusal to pay, or even to seek a payment arrangement, and to instead insist that she be provided the service at no charge, the Complainant has not acted in good faith and therefore runs afoul of the clean hands doctrine.

The only harm for which the Complainant seeks redress is the harm which the Complainant caused to herself, and the Commission should not entertain the Complainant’s attempt to elicit free service from Verizon PA.

C. Verizon PA’s Answer to “other related facts.”

Verizon PA ADMITS that it contacted the Complainant but DENIES the Complainant’s description of the nature of that conversation. By way of further answer, Verizon PA AVERS that it contacted the Complainant in an effort to see if it could help the Complainant reduce her

²³ *The McKeesport Gas Co. v. The Carnegie Steel Co.*, 189 Pa. 509, 513, 42 A. 42 (1899) (citing *Pomeroy’s Equity Jurisprudence* § 397; *Cassady v. Cavenor*, 37 Iowa 300; *McAllister v. Henderson*, 134 Ind. 453; *Palmer v. Harris*, 60 Pa. 156 (1869)).

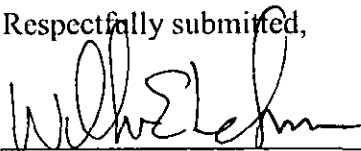
²⁴ Docket No. C-20030566, 2006 WL 721580 (2005).

monthly bill and to come to some kind of payment arrangement that would allow the Complainant to keep her non-basic services and resolve the complaint. During the course of that conversation, Verizon PA explained the various options that would enable the Complainant to lower her bill. Verizon also agreed to check on possible Lifeline options and call the Complainant back with an explanation of those options. Verizon PA has attempted to call the Complainant back but without success and was unable to leave a message because the Complainant does not have an answering machine. Verizon PA is willing to discuss these options with the Complainant at the hearing.

IV. Conclusion

For all the reasons described above, Verizon PA requests that the Commission deny Complainant's Petition for Interim Emergency Relief.

Respectfully submitted,



William E. Lehman, I.D. No. 83936
Hawke McKeon & Sniscak LLP
100 North 10th Street
P.O. Box 1778
Harrisburg, PA 17105
(717) 236-1300
welehman@hmslegal.com

Counsel for Verizon Pennsylvania LLC

Dated: January 15, 2014

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CERTIFICATE OF SERVICE


I hereby certify that I have this day served a true copy of the foregoing Answer to Petition for Emergency Order upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

Service Via First Class and Overnight Mail

Jackie Stefanowicz
311 New Street
Duryea, PA 18642

Service Via Hand Delivery

Honorable Elizabeth H. Barnes
Administrative Law Judge
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
2nd Floor, L-M West
Harrisburg, PA 17120



William E. Lehman

Dated this 15th day of January 2014

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